

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARIA GUADALUPE ELLIS, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

**NIKE USA, INC. and NIKE RETAIL
SERVICES, INC.,**

Defendants.

Case No. 4:23-cv-00632-MTS

Honorable Matthew T. Schelp

DEFENDANTS' MOTION TO DISMISS

Defendants Nike USA, Inc. and Nike Retail Services, Inc. (collectively, "Nike"), by its attorneys, hereby move pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing Plaintiff Maria Guadalupe Ellis's First Amended Complaint ("FAC") in its entirety with prejudice. Nike relies upon the facts and law set forth in the accompanying Memorandum of Law, Request for Judicial Notice, and Declaration of David R. Singh.

As more fully explained in the accompanying Memorandum of Law, the Court should dismiss the FAC in its entirety with prejudice for the following reasons:

First, the FAC adds no allegations curing Plaintiff's lack of standing to assert claims with respect to products she did not purchase or representations she did not see or rely upon.

Second, Plaintiff still does not plead any actionable deception. Plaintiff's claims are all grounded in fraud, but the FAC does not satisfy the particularity requirements of Rule 9(b). Plaintiff's claims also fail Rule 8's plausibility standard. Fed. R. Civ. P. 8 and 9(b). Regarding

her claims that Nike's statements are misleading, a reasonable consumer would not be deceived given Nike's explanations and qualifications. Regarding her new claim that Nike's statements are false, Plaintiff's only "support" is an unwarranted negative inference that the inclusion of a product's material breakdown in one location on certain product-specific webpages means that the absence of a product's material breakdown in the same location on other product-specific webpages somehow shows that those products do not contain recycled or organic fibers. Plaintiff cites no factual support, such as analysis of the relevant products' fiber content, to make this theory plausible. Indeed, Plaintiff ignores the fact that Nike discloses the recycled and organic fiber breakdown for each product in several places.

Third, the FAC fails to cure the other pleading deficiencies Nike identified with respect to Plaintiff's unjust enrichment, negligent misrepresentation, and fraud claims. Specifically, nothing in the FAC exempts these claims from the economic loss doctrine. Plaintiff also still has not alleged facts establishing that Nike had an intent to deceive (as required for common law fraud) or that it received a benefit from Plaintiff (as required for unjust enrichment).

Fourth, the FAC does not cure Plaintiff's lack of standing to seek prospective injunctive relief. Plaintiff is now fully aware of the supposed risk of deception and cannot seek relief for a hypothetical future injury.

WHEREFORE, Nike USA, Inc. and Nike Retail Services, Inc. respectfully request that this Court grant its Motion to Dismiss, enter an order dismissing the FAC in its entirety with prejudice, and for such other and further relief as this Court deems just and proper.

Dated: August 24, 2023

Respectfully submitted,

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***Attorneys for Defendants NIKE USA, INC.
and NIKE RETAIL SERVICES, INC.***

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed on this 24th day of August, 2023, the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Beth A. Bauer